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BEFORE THE ARIZONA CORPORATION COMMISSION

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In the matter of: LOANGO CORPORATION, a Utah corporation, JUSTIN C. BILLINGSLEY and HEATHER BILLINGSLEY, husband and wife, JEFFREY SCOTT PETERSON, an unmarried man, JOHN KEITH AYERS and JENNIFER ANN BRINKMAN-AYERS, husband and wife, Respondents.	DOCKET NO. S-20932A-15-0220 **SECURITIES DIVISION'S POST-HEARING REPLY BRIEF**

Arizona Corporation Commission
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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") replies to the post-hearing brief of LoanGo Corporation, Justin C. Billingsley, Heather Billingsley, and Jeffrey Scott Peterson (collectively "the LoanGo Respondents") and the post-hearing brief of John Keith Ayers and Jennifer Ann Brinkman-Ayers as follows. This reply addresses only specific issues that especially need correction. The Division otherwise relies on its original post-hearing brief.

I. Ayers Was a Control Person of LoanGo

1. The two 9th Circuit cases that John Keith Ayers ("Ayers") cites for the control person standard, Burgess and Paracor, are not good authorities in Arizona. See Burgess v. Premier Corp., 727 F.2d 826 (9th Cir. 1984); Paracor Finance, Inc. v. General Elec. Capital Corp., 96 F.3d 1151 (9th Cir. 1996). The Arizona Court of Appeals in Eastern Vanguard found that the 9th Circuit's standard for control personal liability, citing Paracor and Burgess, was "too restrictive to guard the public interest as

directed by our state legislature." Eastern Vanguard Forex, Ltd. v. Ariz. Corp. Com'n, 206 Ariz. 399, 411, ¶ 40–41 (App. 2003). The 9th Circuit control person standard stated in Burgess required actual participation in the "activities which are claimed to violate the securities laws." Burgess, 727 F.2d at 832. The 9th Circuit found in Paracor that a chairman of the board of a corporation was not a control person of the corporation because there was "no evidence that [he] exercised direct or indirect control over the [securities] offering in any way." Paracor, 96 F.3d at 1164. However, the court in Eastern Vanguard rejected those principals from Burgess and Paracor and held instead that the control person standard in Arizona does not require actual participation, does not require that the control person actually exercised their legal power to control, and requires only the legal power to control the activities of the primary violator generally, not control over the offering in particular. See Eastern Vanguard, 206 Ariz. at 411–412, ¶ 41–42.

2. Ayers' arguments that he was not a control person because he was not involved in the LoanGo's note offering misapply the standard by improperly relying on Paracor. Like Ayers, two control persons in Eastern Vanguard named Cheng and Yuen argued that they did not supervise securities sales, did not instruct their company's securities salesmen on how to obtain investors, and did not have knowledge or notice of the misrepresentations made to investors. Eastern Vanguard, 206 Ariz. at 413 ¶ 44. Nevertheless, because the control person standard does not require exercising control over the securities offering, "based on their status as sole shareholders and officers and directors … the Commission's finding that Cheng and Yuen were control persons is supported by the evidence." See id. Likewise, Ayers was a control person of LoanGo Corporation ("LoanGo") because of his status as an officer, director, and one of the three shareholders of LoanGo regardless of whether he was involved in LoanGo's note offering.

3. Ayers also argues that the Shorey case stressed consistent involvement in management and finances. Shorey v. Ariz. Corp. Com'n, 2015 WL 3767355 (App. 2015) (memorandum decision).[1]

[1] Available at http://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2015/1%20CA-CV%2014-0510.pdf

Although the respondent in that case did have such involvement, the standard does not require such involvement. See id. at ¶¶ 10, 12, 13. On the contrary, Eastern Vanguard noted that "the evidence need only show that the person targeted as a controlling person had the legal power, either individually or as part of a control group, to control the activities of the primary violator." Eastern Vanguard, 206 Ariz. at 412 ¶ 42. Although the court in Eastern Vanguard listed evidence of some actual control exercised by Cheng and Yuen, the court ultimately relied not on actual control but on the power to control that came with their status within their company, holding that, "based on their status as sole shareholders and officers and directors," they were control persons. See id. at 413 ¶ 44 (emphasis added).

II. Ayers Did Not Act in Good Faith Because He Did Not Maintain an Ongoing System of Supervision and Internal Controls

4. The good faith affirmative defense to control person liability, in relevant part, requires at a minimum that the control person exercised due care by taking reasonable steps to maintain and enforce a reasonable and proper ongoing system of supervision and internal controls. Eastern Vanguard, 206 Ariz. at 414, ¶ 50–51. Despite Ayers' arguments, he did not maintain and enforce such a system.

5. Ayers' first argument, that it was reasonable to trust Jeffrey Scott Peterson's ("Peterson") securities background, is incorrect. Ayers did not have enough information about Peterson to reasonably rely on his background. Ayers believed that Peterson "supposedly" had raised money before, but he admitted that he did no due diligence on Peterson before partnering with him and instead just took Peterson at his word.[2] And regardless of Peterson's background, Ayers made no effort to enforce any internal controls even when Ayers became concerned about how the investors' money was being spent.[3] Despite his concern, Ayers did not insist that the offering be stopped to account for the investors' money.[4] Ayers admitted that the reason for this was that he did not have a confrontational personality.[5] It was not a matter of faith in Peterson's securities background.

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[2] S-39 p.53:7–21
[3] S-39 pp.68:21–69:2; T.163:5–164:12
[4] S-39 p.69:8–17
[5] S-39 p.69:8–17

6. Ayers' second argument, that he believed due diligence was being done by Gilford Securities, does not show good faith either. Ayers' brief concedes that he was unaware during the offering that LoanGo had not retained Gilford Securities. This demonstrates Ayers' failure to maintain a reasonable and proper system of supervision by failing to confirm that LoanGo had even engaged the securities firm whose involvement Ayers purports to have relied on.

7. Ayers' third argument, that his efforts to wind down the company when he was left to "pick up the pieces" amount to good faith, is also incorrect. These efforts, which did not begin until after the fraud violations had already occurred, were not an ongoing system of supervision and internal controls. For example, the court in Eastern Vanguard found that control persons did not establish good faith by requiring salesmen to attend a two-month training program because such a program was not an "ongoing system." Eastern Vanguard, 206 Ariz. at 414 ¶ 51.

III. The LoanGo Respondents' Arguments Against the Authenticity of the Skype Logs Should Be Rejected

8. In its post-hearing brief, the Division argued why the Skype Logs (exhibits S-34 through S-37) should be credited as authentic, noted specific evidence corroborating the Skype Logs, and described statements attributed to Peterson in the Skype Logs that he conceded may be accurate. The Division also cited specific passages of the Skype Logs as evidence supporting its allegations.

9. In response, the LoanGo Respondents attempt to raise only general concerns about the authenticity of the Skype Logs. They suggest that the Skype Logs may be authentic in part and note "the possibility that only portions of the Skype Logs could have been altered." However, the LoanGo Respondents do not identify any specific passages of the Skype Logs they believe to be altered. Instead, their strategy is to try to create a general cloud of uncertainty about the Skype Logs. Because their arguments lack any specificity, they should be rejected.

10. In contrast to the LoanGo Respondents' general arguments, the Division has explained in its post-hearing brief how to infer that Justin C. Billingsley ("Billingsley") altered four of the investors' subscription agreements. The Division identified the specific passages of the subscription

agreements that were altered, namely the checked boxes claiming that the investors' net worths qualified them as accredited investors. The Division offered testimony from multiple sources that those accredited investor representations were false and explained why Billingsley had a specific motive to alter the subscription agreements to insert those false accredited investor representations. The LoanGo Respondents' fail to support their authenticity arguments with similar specifics.

IV. LoanGo's Private Placement Memorandum Would Not Cure the Fraud Liability Even If It Had Been Given to Investors

11. The LoanGo Respondents' brief suggests that if the Investors received LoanGo's private placement memorandum ("PPM") before investing, that would cure Billingsley and LoanGo's fraud violations. This is incorrect and misconstrues the Division's allegations about misleading omissions.

12. The Division alleges that LoanGo, through Billingsley, made two misleading omissions in connection with the sale of LoanGo's notes ("Notes"). Billingsley stated that the investors' funds would be used to start the company, but omitted that their money could also be used to pay him a 10% commission and to repay $20,000 in loans that he and Peterson made to LoanGo.[6] The PPM would not have cured this omission because the PPM did not disclose this information, and the PPM also affirmatively misrepresented that LoanGo executive officers, such as Billingsley, would not receive any remuneration for selling the Notes.[7] Billingsley also told Mr. Jordan that the Notes were a good investment but omitted LoanGo's defaults on the first four investors' notes.[8] The PPM would not have cured this omission because it did not disclose the defaults.[9]

V. The Respondents Have Not Claimed That LoanGo's Notes Were Exempt From Registration

13. During their oral closing argument, the LoanGo Respondents argued that LoanGo's Notes were exempt from registration but did not specify any exemption grounds. However, in their briefs

[6] T.27:11–18; T.61:4–6; T.65:17–22; T.101:25–102:8
[7] S-3 at ACC1001
[8] T.102:9–11; T.254:5–255:10
[9] S-3

neither the LoanGo Respondents nor the Ayers have claimed that LoanGo's Notes were exempt from registration.

VI. Conclusion

14. The arguments in the Respondents' post-hearing briefs should be rejected. Ayers' arguments do not apply the proper legal standards for control person liability and the good faith affirmative defense, and the LoanGo Respondents' arguments about document authenticity and the private placement memorandum are mistaken.

RESPECTFULLY SUBMITTED this 9th day of January, 2017.

ARIZONA CORPORATION COMMISSION

By: Paul Kitchin

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On this 9th day of January, 2017, the foregoing document was filed with Docket Control as a Securities Division Brief, and copies of the foregoing were mailed on behalf of the Securities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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